IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

Crl.MC.No. 3784 of 2003

AGAINST THE ORDER DATED 03/04/2003 IN CMP.2160/03 IN CC.253/2001 of CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

.....

PETITIONER/PETITIONER:

R.G.VILASKUMAR,
KALLINGAVILA VEEDU,
NETTAYAM KACHANI,
THIRUVANANTHAPURAM.

BY ADV. SRI.P.PARAMESWARAN NAIR

RESPONDENTS/COUNTER PETITIONER:

1. S.RAMACHANDRAN, T.C.41/1772, LEKHA BHAVAN, MANACUAD, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2 BY PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU
R1 BY ADV. SRI.VELLAYANI SUNDARARAJU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.P. Balachandran, J.

Crl.M.C.No. 3784 of 2003

ORDER

The petitioner in C.M.P.No.2160/03 in C.C.No. 253/01 on the file of the Chief Judicial Magistrate's Court, Thiruvananthapuram is the petitioner. He is the accused in C.C.No.253/01, filed by the first respondent, complaining of commission by the petitioner of offence punishable under Section 138 of the Negotiable Instruments Act. It is submitted by the counsel for the first respondent that C.M.P.No.2160/03 was being filed by the petitioner in the court below after the complainant closed his evidence and on examination of the petitioner/accused under Section 313 Cr.P.C. was also over. According to the counsel for the first respondent, such a petition should have been filed earlier. The contention so advanced by the counsel for the first respondent is not tenable, as the petitioner/accused can adduce evidence on his side only when is called upon to enter upon his

defence. Hence, filing of C.M.P.No.2160/03, to have the disputed Exhibit P1 cheque being sent to handwriting expert for opinion cannot be said to be belated. But, all the same, on going through Annexure A3 impugned order and the deposition of PW1, produced as Annexure A1, it is seen that though the first respondent/complainant stated, when examined as PW1, that the writings in Exhibit P1 cheque are of the petitioner/accused, in further cross examination, he has stated that when the accused came, he had brought the cheque and the cheque was being signed in his presence.

2. When it is a case where the petitioner has only signed in the cheque in the presence of the first respondent, an expert opinion obtained as regards the writings in Exhibit P1 cheque will have no effect at all on the merits of the case. As rightly observed by the court below, only if the defence counsel had put a question to PW1 as to whether the writings regarding the amount, date and name of the payee were in the handwriting of the accused himself and PW1 had stated that the accused

himself had made all the writings, the prayer of the petitioner/accused to have the cheque forwarded for opinion of the handwriting expert deserves to be allowed. In the instance case, in the absence of such a question having been put to PW1 and PW1 having stated that the cheque written up and brought by the petitioner/accused was only being signed in his presence, the request to have Exhibit P1 cheque sent for expert opinion, as regards the handwriting therein, did not deserve to be allowed and it was rightly being dismissed by Annexure A3 order.

In the circumstances, the prayer in this Crl.M.C. to set aside Annexure A3 order and to allow C.M.P.No.2160/03 in C.C.No.253/01 on the file of the Chief Judicial Magistrate's Court, Thiruvananthapuram does not deserve to be allowed. This Crl.M.C. is, hence, dismissed.

8th August, 2007 (K.P.Balachandran, Judge)

tkv

K.P.Balachandran, J.

Crl.M.C.No.3984 of 2003

ORDER

8th August, 2007